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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,871	10/03/2003	Jack Wasserman	672988/0003	1275

7590 01/05/2005

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EXAMINER
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VIG, NARESH

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/678,871

**Applicant(s)**

WASSERMAN, JACK

**Examiner**

Naresh Vig

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 20-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-17 and 20-81 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is in reference to application filed on 03 October 2003 and preliminary amendment filed on 03 June 2004 with amendment to claims 1, 7, 10, 11 and 20, cancellation of claims 18 and 19, and, addition of new claims 21 – 81 are acknowledged and considered. There are 79 claims, claims 1 – 17 and 20 – 81 pending for examination.

#### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 – 17 and 78 – 81, drawn to a method for a real estate agent to obtain a real estate listing for a property of a seller where the agent provides consideration to the seller for receiving real estate listing, and seller return consideration to the agent if a sale condition for the property is met classified in class 705, subclass 1.
- II. Claims 20 and 21, drawn to a method of a real estate agent to obtain a real estate listing by offering the seller a first arrangement to obtain listing for the property; and real estate offering the seller a second arrangement wherein the real estate agent receive a second commission wherein the

seller receives consideration for providing the listing, the consideration not being included in the first arrangement, classified in class 705, subclass 1.

- III. Claims 22 – 27, drawn to a method for a real estate agent to obtain a real estate listing by providing up-front consideration to the seller and allowing the seller to retain at least a portion of the consideration if a sale condition is not met classified in class 705, subclass 1.
- IV. Claims 28 – 33, drawn to a method for a real estate agent to obtain a real estate listing by providing up-front consideration to the seller; receiving a refund of at least a portion of the consideration from the seller if a sale condition is met; and allowing the seller to retain at least a portion of the consideration if the sale condition is not met classified in class 705, subclass 1.
- V. Claims 34 – 44, drawn to a method of a real estate agent to obtain a real estate listing by offering a seller a first arrangement wherein the real estate agent obtains the listing for the property, receives a first commission from the seller if a first sale condition is met and offering the seller a second arrangement by giving seller consideration in return for the listing, the consideration not being included in the first arrangement, wherein the real estate agent receives a second commission if a second

sale condition is met, the seller keeps at least a portion of the consideration if the second sale condition is not met classified in class 705, subclass 1.

- VI. Claims 45 – 50, drawn to a method for a real estate agent to obtain a real estate listing by determining up-front consideration to be given to the seller, determining whether the seller is allowed to retain at least a portion of the consideration based on whether a sale condition is met classified in class 705; subclass 1.
- VII. Claims 51 – 57, drawn to a system for tracking seller contracts comprising one or more processors coupled to electronic storage, the processors programmed to associate with each seller contract an indication of the up-front consideration to the seller and an indication of the time period; and to track expiration of the time period, thereby enabling a determination of whether the seller retains at least a portion of the up-front consideration classified in class 705, subclass 1.
- VIII. Claims 58 – 68, drawn to a method for a real estate agent to obtain a real estate listing by offering the seller a first arrangement wherein the real estate agent obtains the listing for the property to receive a first commission; real estate agent offering the seller a second arrangement

wherein the seller receives consideration in return for providing the second listing, the consideration not being included in the first arrangement where determination of the commission and consideration based on an arrangement selected by the seller classified in class 705, subclass 1.

- IX. Claims 69 – 71, directed to a system for tracking at least two arrangements for a real estate agent comprising one or more processors coupled to electronic storage, the processors programmed to associate either a first arrangement or a second arrangement with a seller, and associate arrangements with commissions and consideration classified in class 705, subclass 1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II – IX are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention I is directed to real estate agent providing consideration to seller for receiving the listing.

Inventions II and I & III – IX are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention II is directed to real estate agent provides options to seller for receiving the listing.

Inventions III and I – II & IV – IX are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention III is directed to real estate agent provides options to seller for receiving the listing and allows the seller to retain the portion of the consideration when the sales conditions are not met.

Inventions IV and I – III & V – IX are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other

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combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention IV is directed to real estate agent provides options to seller for receiving the listing, real estate agent receives refund of a portion of consideration when the sales condition are met, and allows the seller to retain the portion of the consideration when the sales conditions are not met.

Inventions V and I – IV & VI – IX are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention V is directed to real estate agent provides options to seller for receiving the listing, seller receives consideration for providing listing for a specific offer, and allows the seller to keep the portion of the consideration when the sales conditions are not met.

Inventions VI and I – V & VII – IX are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed



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does not require the particulars of the subcombination as claimed because invention VI is directed to real estate agent determines whether up-front consideration is to be given to a seller to receive the real estate listing, and determine whether seller is allowed to retain the portion of the consideration when the sales conditions are not met.

Inventions VII and I – VI & VIII – IX are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention III is directed to a system to track the listing expiration time for managing the real estate listing contract.

Inventions VIII and I – VII & IX are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention III is directed to real estate agent provides options to seller for receiving the listing, seller

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receives consideration for providing listing for a specific offer, and allows the seller to determine commission and consideration based on an arrangement selected by seller.

Inventions I – VIII are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention III is directed to a system to track the listing expiration time for managing the real estate listing contracts by associating commissions and consideration with listing contract.

Because these inventions are distinct for the reasons given above and the search required for one Group is not required for other Group, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

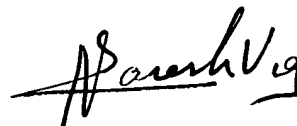
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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naresh Vig whose telephone number is 703.305.3372. The examiner can normally be reached on M-F 7:30 - 5:00 (Alt Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703.308.2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Naresh Vig', with a stylized flourish at the end.

Naresh Vig  
Patent Examiner  
December 30, 2004